

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,) CASE NO. 08CR3367-MJL
4)
5 PLAINTIFF,)
6)
7 -V-)
8) SAN DIEGO, CALIFORNIA
9) JANUARY 12, 2009
10) 3:35 P.M.
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11 BEFORE THE HONORABLE M. JAMES LORENZ
12 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE GOVERNMENT: LAURA E. DUFFY, UNITED STATES ATTORNEY
16 BY: NICOLE JONES, ESQ.
17 ASSISTANT U.S. ATTORNEY
18 880 FRONT STREET
19 SAN DIEGO, CALIFORNIA 92101

20 FOR THE DEFENDANT: LABELLA AND MCNAMARA
21 BY: CHARLES G. LABELLA, ESQ.
22 401 WEST A STREET, SUITE 1150
23 SAN DIEGO, CALIFORNIA 92101

24 BALLARD SPAHR LLP
25 BY: CHRYSTA ELLIOTT, ESQ.
655 WEST BROADWAY, SUITE 1600
SAN DIEGO, CALIFORNIA 92101

OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
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REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

JANUARY 12, 2009

SAN DIEGO, CALIFORNIA; MONDAY, JANUARY 12, 2009; 3:35 P.M.

DEPUTY CLERK: CALLING MATTER NUMBER 16, 08CR3367,
UNITED STATES OF AMERICA VERSUS TINA KAFKA, ON CALENDAR FOR
MOTION HEARING AND TRIAL SETTING

MS. JONES: GOOD AFTERNOON, YOUR HONOR. NICOLE JONES
FOR THE UNITED STATES.

THE COURT: GOOD AFTERNOON, MS. JONES.

MR. LABELLA: GOOD AFTERNOON, YOUR HONOR. CHARLES
LABELLA AND CHRYSTA ELLIOTT FOR MS. KAFKA, WHO IS PRESENT IN
COURT TODAY.

THE COURT: ALL RIGHT. VERY GOOD.

THIS IS A PLEA AND IMMEDIATE SENTENCE, CORRECT?

MR. LABELLA: YES, YOUR HONOR.

MS. JONES: I HAVE A SUPERSEDING INFORMATION.

(PAUSE)

DEPUTY CLERK: TINA KAFKA, IS THAT YOUR TRUE NAME?

THE DEFENDANT: YES.

DEPUTY CLERK: YOU ARE ADVISED THAT YOU HAVE THE
RIGHT TO HAVE THESE CHARGES PRESENTED TO THE GRAND JURY FOR
INDICTMENT, OR YOU MAY WAIVE INDICTMENT AND ALLOW THE UNITED
STATES ATTORNEY TO FILE THE CHARGES BY WAY OF INFORMATION.

DO YOU DESIRE TO WAIVE INDICTMENT AND IS THIS YOUR
SIGNATURE ON THE WAIVER OF INDICTMENT FORM?

THE DEFENDANT: YES, IT IS.

THE COURT: YOU ARE HEREBY INFORMED THAT A

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1 SUPERCEDING INFORMATION HAS BEEN FILED, CHARGING YOU WITH
2 UNLAWFUL ACCESS TO STORED COMMUNICATIONS.

3 COUNSEL, HAVE YOU RECEIVED A COPY OF THE SUPERCEDING
4 INFORMATION AND DO YOU WAIVE FURTHER READING?

5 **MR. LABELLA:** WE HAVE AND WE WAIVE THE READING. AND
6 I DISCUSSED IT WITH MY CLIENT, YOUR HONOR.

7 **THE COURT:** OKAY.

8 **DEPUTY CLERK:** MS. KAFKA, YOU ARE FURTHER INFORMED
9 THAT YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL AT ALL
10 PROCEEDINGS BEFORE THE COURT. YOU HAVE THE RIGHT TO REMAIN
11 SILENT. YOU HAVE THE RIGHT TO A TRIAL BY JURY. YOU HAVE THE
12 RIGHT TO CONFRONT AND CROSS-EXAMINE ANY WITNESSES WHO TESTIFY
13 AGAINST YOU. AND YOU HAVE THE RIGHT TO HAVE WITNESSES
14 SUBPOENAED TO TESTIFY ON YOUR BEHALF.

15 HOW DO YOU NOW PLEAD TO THE ONE-COUNT SUPERCEDING
16 INFORMATION?

17 **THE DEFENDANT:** GUILTY.

18 **DEPUTY CLERK:** THANK YOU.

19 CAN YOU PLEASE RAISE YOUR RIGHT HAND?

20 DO YOU SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL
21 GIVE IN THE CAUSE NOW BEFORE THE COURT SHALL BE THE TRUTH, THE
22 WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

23 **THE DEFENDANT:** YES, I DO.

24 **DEPUTY CLERK:** THANK YOU. NOW LOWER YOUR HAND.

25 **THE COURT:** ALL RIGHT. MS. KAFKA, YOU HAVE BEEN

1 PLACED UNDER OATH, SWORN TO TELL THE TRUTH. IF YOU MAKE FALSE
2 STATEMENTS, THESE STATEMENTS CAN LATER BE USED AGAINST YOU.

3 DO YOU UNDERSTAND THAT?

4 **THE DEFENDANT:** YES, I DO, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. NOW, YOU HAVE A RIGHT TO
6 PERSIST IN YOUR PLEA OF GUILTY. IF THE COURT ACCEPTS YOUR PLEA
7 OF GUILTY, YOU HAVE WAIVED THE RIGHT TO A TRIAL AND THE RIGHT
8 TO APPEAL FROM AN ADVERSE JUDGMENT.

9 DO YOU UNDERSTAND THAT?

10 **THE DEFENDANT:** YES, I DO.

11 **THE COURT:** NOW, YOU HAVE THE FOLLOWING
12 CONSTITUTIONAL RIGHTS: YOU HAVE THE RIGHT TO A SPEEDY AND A
13 PUBLIC TRIAL; YOU HAVE THE RIGHT TO A TRIAL BY JURY; YOU HAVE
14 THE RIGHT TO HAVE AN ATTORNEY AT ALL STAGES OF THE PROCEEDINGS,
15 INCLUDING APPOINTED COUNSEL AT NO COST TO YOURSELF IF YOU
16 CANNOT AFFORD COUNSEL; YOU HAVE THE PRIVILEGE AGAINST
17 SELF-INCRIMINATION -- THAT IS, TO REMAIN SILENT AND NOT
18 INCRIMINATE YOURSELF; YOU HAVE THE RIGHT TO BE CONFRONTED BY
19 AND CROSS-EXAMINE ALL WITNESSES WHO ACCUSE YOU IN THIS MATTER;
20 AND YOU HAVE THE RIGHT TO USE THE COURT'S PROCESS TO SUBPOENA
21 WITNESSES TO TESTIFY ON YOUR BEHALF.

22 DO YOU UNDERSTAND YOU HAVE ALL OF THESE RIGHTS?

23 **THE DEFENDANT:** YES, I DO, YOUR HONOR.

24 **THE COURT:** MY UNDERSTANDING IS YOU WANT TO GIVE UP
25 THESE RIGHTS AND PLEAD GUILTY TO A VIOLATION OF UNLAWFUL ACCESS

1 TO STORED COMMUNICATIONS; IS THAT CORRECT?

2 **THE DEFENDANT:** YES.

3 **THE COURT:** ALL RIGHT. NOW, THE MAXIMUM PENALTY FOR
4 THIS VIOLATION CARRIES A MAXIMUM OF ONE-YEAR IMPRISONMENT, A
5 MAXIMUM \$100 FINE, A MANDATORY \$25 SPECIAL ASSESSMENT, AND THE
6 COURT CAN ORDER ONE YEAR OF SUPERVISED RELEASE OR A TERM OF
7 PROBATION OF NOT MORE THAN FIVE YEARS.

8 DO YOU UNDERSTAND THAT IS THE MAXIMUM YOU CAN
9 RECEIVE?

10 **THE DEFENDANT:** YES, I DO.

11 **THE COURT:** ALL RIGHT. NOW, IF YOU WERE TO GO TO
12 TRIAL, THE GOVERNMENT HAS THE BURDEN OF PROVING ALL OF THE
13 ELEMENTS OF THE VIOLATION BEYOND A REASONABLE DOUBT.

14 THE GOVERNMENT WOULD HAVE TO PROVE THAT YOU
15 INTENTIONALLY ACCESSED WITHOUT OR IN EXCESS OF AUTHORIZATION A
16 FACILITY THAT PROVIDED AN ELECTRONIC COMMUNICATION SERVICE AND
17 THEREBY OBTAINED ACCESS TO A COMMUNICATION IN ELECTRONIC
18 STORAGE.

19 DO YOU UNDERSTAND THOSE ARE THE ELEMENTS THAT THE
20 GOVERNMENT WOULD HAVE TO PROVE IF YOU WERE TO GO TO TRIAL?

21 **THE DEFENDANT:** YES, I DO, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. NOW, YOU'VE ENTERED INTO A
23 PLEA AGREEMENT NEGOTIATED BY YOUR COUNSEL AND AGREED TO BY
24 YOURSELF. I FIND THAT IT COMPLIES WITH SECTION 6B1.2 OF THE
25 GUIDELINES.

1 NOW, I ASSUME YOU HAVE READ THE PLEA AGREEMENT?

2 **THE DEFENDANT:** YES, I HAVE.

3 **THE COURT:** YOU HAVE GONE OVER THE AGREEMENT WITH
4 YOUR COUNSEL, PARAGRAPH BY PARAGRAPH?

5 **THE DEFENDANT:** YES, I HAVE.

6 **THE COURT:** DO YOU FEEL YOU UNDERSTAND THE AGREEMENT?

7 **THE DEFENDANT:** YES.

8 **THE COURT:** DO YOU HAVE ANY QUESTIONS AT THIS TIME
9 ABOUT THE AGREEMENT?

10 **THE DEFENDANT:** NO, I DON'T, YOUR HONOR.

11 **THE COURT:** OKAY. NOW, YOU HAVE INITIALED EACH PAGE
12 OF THE AGREEMENT AND YOU HAVE SIGNED AT THE END. THIS DOES
13 INDICATE TO THE COURT THAT YOU HAVE GONE OVER EACH AND EVERY
14 PAGE OF THE AGREEMENT WITH YOUR COUNSEL, AND THAT YOU
15 UNDERSTAND THE TERMS AND CONDITIONS OF THE AGREEMENT.

16 NOW, YOU UNDERSTAND THE COURT IS NOT BOUND BY THE
17 AGREEMENT?

18 **THE DEFENDANT:** YES, I DO.

19 **THE COURT:** YOU ALSO UNDERSTAND THAT IF I DO
20 PRONOUNCE SENTENCE IN ACCORDANCE WITH THE TERMS OF THE
21 AGREEMENT, THEN YOU HAVE WAIVED YOUR RIGHT TO APPEAL THE
22 SENTENCE OR AT A LATER DATE TO COLLATERALLY ATTACK THE
23 SENTENCE?

24 **THE DEFENDANT:** YES, I DO, YOUR HONOR.

25 **THE COURT:** YOU ALSO UNDERSTAND THAT IF I DON'T

1 FOLLOW THE TERMS OF THE AGREEMENT, YOU HAVE NO RIGHT TO
2 WITHDRAW YOUR PLEA OF GUILTY?

3 **THE DEFENDANT:** YES, I UNDERSTAND THAT.

4 **THE COURT:** ALL RIGHT. NOW, THE COURT WILL IMPOSE A
5 SENTENCE BASED ON THE FACTORS SET FORTH IN 18 UNITED STATES
6 CODE 3553(A). HOWEVER, IN IMPOSING THIS SENTENCE, THE COURT
7 WILL CONSULT THE UNITED STATES SENTENCING GUIDELINES AND TAKE
8 THEM INTO ACCOUNT IN DECIDING YOUR SENTENCE.

9 HAVE YOU DISCUSSED THE SENTENCING FACTORS AND
10 GUIDELINES WITH YOUR COUNSEL?

11 **THE DEFENDANT:** YES, I HAVE.

12 **THE COURT:** YOU UNDERSTAND THE GUIDELINES ARE ONLY
13 ADVISORY AND NOT MANDATORY?

14 **THE DEFENDANT:** YES, I DO, YOUR HONOR.

15 **THE COURT:** YOU UNDERSTAND THE COURT MAY IMPOSE A
16 SENTENCE MORE SEVERE OR LESS SEVERE THAN THE SENTENCE CALLED
17 FOR IN THE GUIDELINES?

18 **THE DEFENDANT:** YES, I DO.

19 **THE COURT:** NOW, IN MOST CASES THE COURT IS NOT ABLE
20 TO DETERMINE THE APPROPRIATE SENTENCE FOR YOUR CASE UNTIL AFTER
21 THE PROBATION DEPARTMENT PREPARES A PRESENTENCE REPORT AND YOU
22 AND THE GOVERNMENT HAVE HAD AN OPPORTUNITY TO CHALLENGE THE
23 FACTS AND RECOMMENDATIONS CONTAINED IN THAT REPORT.

24 YOU UNDERSTAND THAT YOU DO HAVE A RIGHT TO A
25 PRESENTENCE REPORT?

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1 **THE DEFENDANT:** YES, I DO.

2 **THE COURT:** MY UNDERSTANDING IS YOU WOULD LIKE TO
3 HAVE AN IMMEDIATE SENTENCE TODAY?

4 **THE DEFENDANT:** YES, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. IF THAT IS THE CIRCUMSTANCES,
6 THEN YOU WILL HAVE TO VERBALLY GIVE UP AND WAIVE YOUR RIGHT TO
7 A PRESENTENCE REPORT THAT YOU HAVE A RIGHT TO.

8 **THE DEFENDANT:** YES, I DO.

9 **THE COURT:** OKAY. ARE YOU SATISFIED WITH THE
10 SERVICES OF YOUR COUNSEL?

11 **THE DEFENDANT:** YES. VERY.

12 **THE COURT:** ARE YOU ENTERING THIS PLEA OF GUILTY OF
13 YOUR OWN FREE WILL?

14 **THE DEFENDANT:** YES, I AM.

15 **THE COURT:** HAS ANYONE MADE ANY THREATS OF FORCE
16 AGAINST YOU OR ANY MEMBER OF YOUR FAMILY, THAT IS CAUSING YOU
17 TO ENTER THIS PLEA?

18 **THE DEFENDANT:** NO, YOUR HONOR.

19 **THE COURT:** HAS ANYONE MADE YOU ANY PROMISES OR
20 OFFERED ANY REWARDS IN RETURN FOR THIS GUILTY PLEA, OTHER THAN
21 THE PROMISES IN THE PLEA AGREEMENT?

22 **THE DEFENDANT:** NO, YOUR HONOR.

23 **THE COURT:** SO YOU'RE PLEADING GUILTY BECAUSE IN
24 TRUTH AND IN FACT YOU ARE GUILTY AS CHARGED?

25 **THE DEFENDANT:** YES, YOUR HONOR.

1 **THE COURT:** OKAY. ALL RIGHT.

2 MR. LABELLA, COULD YOU PROVIDE A FACTUAL BASIS?

3 **MR. LABELLA:** YES, YOUR HONOR. MS. KAFKA ACCESSED
4 EMAIL ACCOUNTS -- PASSWORD-PROTECTED EMAIL ACCOUNTS FOR A
5 PERIOD OF TIME. SHE WAS UNAUTHORIZED TO DO SO. SHE, BY DOING
6 THAT, HAD ACCESS TO OPENED AND UNOPENED EMAILS. SHE LOOKED AT
7 THEM. THAT IS A VIOLATION OF THE STATUTE. AND THAT IS WHAT
8 SHE DID, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. MS. KAFKA, DID YOU HEAR
10 EVERYTHING YOUR COUNSEL JUST STATED?

11 **THE DEFENDANT:** YES, I DID.

12 **THE COURT:** DID YOU DO THAT?

13 **THE DEFENDANT:** YES, I DID.

14 **THE COURT:** ALL RIGHT. IS THE GOVERNMENT SATISFIED?

15 **MS. JONES:** YES, YOUR HONOR

16 **THE COURT:** ALL RIGHT. THE COURT FINDS THAT
17 MS. KAFKA HAS ENTERED HER PLEA OF GUILTY FREELY AND
18 VOLUNTARILY; THAT SHE UNDERSTANDS THE ELEMENTS OF THE CRIME AND
19 THE MAXIMUM PENALTY; UNDERSTANDS THE TERMS AND CONDITIONS OF
20 THE PLEA AGREEMENT; AND THERE IS A FACTUAL BASIS FOR THE PLEA.

21 I HAVE BEEN PROVIDED WITH THE PLEA AGREEMENT AND THE
22 INFORMATION THAT HAS BEEN SUBMITTED. I BELIEVE I HAVE
23 SUFFICIENT INFORMATION UNDER 3553(A) TO SENTENCE THE DEFENDANT
24 WITHOUT A PRESENTENCE REPORT; THEREFORE, I WILL ACCEPT THE
25 WAIVER OF THE PRESENTENCE REPORT AND WE'LL HAVE AN IMMEDIATE

1 SENTENCE.

2 WITH THAT, MR. LABELLA, WHAT DO YOU HAVE TO SAY ON
3 BEHALF OF MS. KAFKA?

4 **MR. LABELLA:** YOUR HONOR, WE SUBMITTED TO YOUR HONOR
5 A BRIEF SENTENCING MEMO. I WANT TO SAY, FROM THE OUTSET, THAT
6 I APPRECIATE MS. JONES' PROFESSIONALISM THROUGHOUT THIS. SHE
7 GAVE US THE OPPORTUNITY TO MAKE A PRESENTATION TO THE U.S.
8 ATTORNEY'S OFFICE. SHE LISTENED. AND SHE AND THE OFFICE, I
9 THINK, REACTED APPROPRIATELY.

10 WE ARE HERE FOR SENTENCING ON A MISDEMEANOR PLEA.
11 MS. KAFKA SPENT THREE TO FOUR DAYS IN CUSTODY WHEN SHE WAS
12 INITIALLY ARRESTED ON THESE CHARGES THAT WERE CHARGED IN AN
13 INDICTMENT. AND BASED ON ALL THE FACTS AND CIRCUMSTANCES THAT
14 WE APPRISED YOUR HONOR OF IN OUR SEALED SUBMISSION, I THINK
15 THAT THE APPROPRIATE SENTENCE IS ONE OF PROBATION.

16 AND THE ONLY SLIGHT DISAGREEMENT WE HAVE WITH THE
17 GOVERNMENT IS THE EXTENT OF THE PROBATIONARY PERIOD. AND WE
18 HAVE ASKED FOR ONE YEAR; THE GOVERNMENT HAS ASKED FOR TWO
19 YEARS.

20 THAT ASIDE, YOUR HONOR, I BELIEVE THAT UNDER ALL THE
21 CIRCUMSTANCES A PROBATIONARY PERIOD SHOULD BE THE SENTENCE
22 IMPOSED. NO FINE IMPOSED, BASED ON FINANCIAL SITUATION AND THE
23 NATURE OF THE OFFENSE, AND WE WOULD ASK THE COURT TO DO THAT.

24 **THE COURT:** ALL RIGHT.

25 MS. KAFKA, ANYTHING YOU WOULD LIKE TO TELL THE COURT?

1 **THE DEFENDANT:** I WOULD JUST LIKE TO SAY THAT I WAS
2 IN A VERY TERRIBLE TIME OF MY LIFE. AND I DID THIS, WHICH WAS
3 ILLEGAL AND STUPID, AND I AM TERRIBLY SORRY.

4 **THE COURT:** OKAY. THE GOVERNMENT?

5 **MS. JONES:** THANK YOU, YOUR HONOR. THE GOVERNMENT
6 ALSO FILED A SENTENCING MEMORANDUM AND AGREES WITH WHAT HAS
7 ALSO BEEN SAID BY DEFENSE COUNSEL. THE ONLY DIFFERENCE IS THE
8 LENGTH OF PROBATION. FOR THE REASONS SET FORTH IN THE MEMO,
9 THE GOVERNMENT BELIEVES THAT TWO YEARS IS APPROPRIATE UNDER
10 THIS CASE, GIVEN THE CHARGE BARGAINED DOWN TO THE MISDEMEANOR,
11 AND ALSO TO ASSIST MS. KAFKA IN GETTING HER LIFE BACK ON TRACK.
12 THE GOVERNMENT BELIEVES THAT THE TWO YEARS, WITH THE THREE
13 CONDITIONS LAID OUT IN THE SENTENCING MEMO, IS APPROPRIATE.

14 **THE COURT:** ALL RIGHT. WELL, I HAVE REVIEWED THE
15 SENTENCING MEMO AND LOOKED AT THE FACTS THAT HAVE BEEN PROVIDED
16 AND I AM PREPARED TO RULE.

17 FIRST, UNDER THE ADVISORY GUIDELINES, THE BASE
18 OFFENSE LEVEL IS SIX. IT WOULD BE INCREASED TO A PLUS TWO
19 UNDER 2B1.1B1B; AND, THEREFORE, IT WOULD BE A LEVEL EIGHT.

20 SHE ACCEPTED RESPONSIBILITY, SO IT WOULD BE A MINUS
21 TWO; THEREFORE, THE RESULTING LEVEL IS SIX.

22 SHE IS IN A CATEGORY ONE WITH NO PRIOR RECORD. THAT
23 WOULD MAKE IT A ZERO-TO-SIX-MONTH GUIDELINE SENTENCE. THE
24 GOVERNMENT RECOMMENDS TWO YEARS' PROBATION, AND THE DEFENSE
25 RECOMMENDS ONE YEAR. I AM GOING TO SENTENCE HER, AS

1 RECOMMENDED, TO PROBATION. I DON'T BELIEVE, BASED ON THE
2 INFORMATION PROVIDED TO ME, THAT MS. KAFKA IS GOING TO BE A
3 RECIDIVIST. I DON'T BELIEVE THAT SHE IS GOING TO DO IT AGAIN.

4 CUSTODY I DON'T THINK WOULD SERVE ANY PURPOSE. I
5 THINK IT'S TRYING TO GET HER LIFE BACK IN ORDER.

6 HOWEVER, MR. LABELLA, YOU DID GET AN INCREDIBLE DEAL
7 HERE. IT DIDN'T START OUT THAT WAY. YOU WERE ABLE TO
8 NEGOTIATE SUBSTANTIALLY, I WOULD SAY, A FANTASTIC DEAL SO THAT
9 I AM GOING TO FOLLOW THE GOVERNMENT'S RECOMMENDATION OF TWO
10 YEARS' PROBATION. I THINK THAT THAT IS THE ONLY SAFEGUARD OR
11 POTENTIAL SAFEGUARD SHOULD THERE BE ANY PROBLEM. AND SO I AM
12 GOING TO SENTENCE HER TO, AS I SAY, PROBATION FOR TWO YEARS.

13 NOW, AS FAR AS THE CONDITIONS OF PROBATION, THERE IS
14 THREE THAT HAVE BEEN SET OUT. ARE THEY JOINTLY RECOMMENDED OR
15 IS THAT JUST THE GOVERNMENT'S?

16 **MS. JONES:** THEY ARE JOINTLY RECOMMENDED, YOUR HONOR.

17 **MR. LABELLA:** YES, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. YOU WILL UNDERGO AVAILABLE
19 MEDICAL, PSYCHIATRIC, OR PSYCHOLOGICAL TREATMENT AS SPECIFIED
20 BY THE COURT. I WILL FOLLOW THE RECOMMENDATION THAT YOU
21 CONTINUE TO SEEK COUNSELING FROM SCOTT BOLES. HE IS A PHD AT
22 8950 VILLA LA JOLLA DRIVE, SUITE A220, LA JOLLA, 92037.

23 APPARENTLY, YOU ARE NOW SEEING HIM TWO TIMES PER
24 WEEK. I WILL LEAVE IT UP TO DR. BOLES AS TO THE TIME FRAME
25 THAT IS NECESSARY, BUT YOU WILL SEE HIM FOR A MINIMUM OF ONE

1 YEAR AND LONGER. UP TO TWO YEARS IF HE FEELS IT'S NECESSARY.

2 YOU ARE NOT TO GO ONTO THE EXPLORER ELEMENTARY SCHOOL
3 PREMISES AT 2230 TRUXTUN ROAD, SAN DIEGO.

4 YOU ARE TO, THREE, REFRAIN FROM CONTACTING JOE GREEN,
5 THE EXPLORER EMPLOYEE.

6 YOU WILL HAVE A FINE OF \$25.

7 AND YOU'RE NOT TO ACCESS THE EXPLORER ELEMENTARY
8 SCHOOL COMPUTER.

9 AND YOU DON'T SEEM TO HAVE A CONTROL SUBSTANCE
10 PROBLEM, SO I WILL FOLLOW THE RECOMMENDATION AND WAIVE THE
11 MANDATORY DRUG TESTING UNDER 3563(A)(5), AS THERE IS NO
12 APPARENT HISTORY OF DRUG USE.

13 I WILL ASSESS THE \$25 FINE, BUT I WILL ASSESS NO
14 OTHER PENALTY. SO I THINK THAT IS IT.

15 **MR. LABELLA:** YOUR HONOR, WE WOULD ASK THAT THE
16 INDICTMENT BE DISMISSED. AND THAT IF THERE IS -- AND I AM NOT
17 SURE, AND I APOLOGIZE -- BUT IF THERE IS ANY TRAVEL
18 RESTRICTIONS IN THE STANDARD PROBATION --

19 **THE COURT:** I DON'T SEE ANY NEED FOR TRAVEL
20 RESTRICTIONS IN A CASE SUCH AS THIS. SHE DOESN'T HAVE A
21 CONTROLLED SUBSTANCE PROBLEM. AND AS LONG AS SHE ABIDES BY THE
22 CONDITIONS NOT TO DO WHAT WE HAVE INDICATED, I DON'T SEE ANY
23 PROBLEM WITH HER TRAVELING.

24 **MR. LABELLA:** AND THEN WE'D MOVE TO DISMISS THE
25 UNDERLYING INDICTMENT, YOUR HONOR.

1 **MS. JONES:** THE GOVERNMENT MOVES TO DISMISS THE
2 UNDERLYING INDICTMENT, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. THAT WILL BE GRANTED. VERY
4 GOOD.

5 GOOD LUCK, MS. KAFKA.

6 **THE DEFENDANT:** THANK YOU VERY MUCH, YOUR HONOR.

7 **MR. LABELLA:** THANK YOU, YOUR HONOR.

8 (PROCEEDINGS CONCLUDED AT 3:51 P.M.)

9 CERTIFICATION

10 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
11 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
12 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
13 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
14 ON JANUARY 12, 2009; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT
TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT
USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE
UNITED STATES JUDICIAL CONFERENCE.

15 DATED: JUNE 2, 2015; AT SAN DIEGO, CALIFORNIA.

16 S/N _____
17 JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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